

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	Civil No. 2:12-cv-00469-WPL-LAM
)	
KENT CARTER, GAIL CARTER,)	
KENT CARTER, AS TRUSTEE FOR)	
THE KENT CARTER FAMILY TRUST)	
PTO, and NEW MEXICO DEPARTMENT)	
OF REVENUE AND TAXATION,)	
)	
Defendants.)	

UNITED STATES' MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT

Plaintiff, the United States of America, moves the Court pursuant to Federal Rule of Civil Procedure 15(a)(2) to amend its complaint so that it may clarify a claim in its initial complaint and so that it may add a claim that was not initially pled as a separate count. Defendant Kent Carter is opposed to the relief sought in this motion on behalf of himself and as trustee of the Kent Carter Family Trust PTO. Defendant New Mexico Department of Revenue and Taxation is unopposed to the relief sought in this motion. In support of this Motion, the United States shows the Court as follows:

Background

1. The United States filed its complaint on March 3, 2012, alleging a refusal or neglect by defendant Kent Carter to pay his federal tax debt. The United States alleged in that complaint that it sought to collect the federal tax debt by foreclosing on defendant Kent Carter's interest in his home, and two additional real properties. In its initial complaint, the United States

did not plead a separate count alleging that defendant Kent Carter Family Trust PTO is the nominee or alter ego of defendant Kent Carter, nor did it allege a distinct claim for fraudulent transfer. Upon review of its file, the United States seeks to make clear that it is pursuing a claim of fraudulent transfer and a claim of nominee or alter ego in addition to refusal and neglect to pay by Kent Carter.

Relief Requested and Authorities

2. The purpose of this motion is to ask the Court to allow the United States to amend its complaint in order to bring additional claims against defendant Kent Carter that were previously not pled in the United States' initial complaint. Leave to amend its complaint will further justice without unduly prejudicing any of the defendants in this case.

3. Under Federal Rule of Civil Procedure 15(a), leave to amend pleadings "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). The Supreme Court interpreted this rule in *Forman v. Davis*, to mean that courts should freely grant leave to amend unless they find "any apparent or declared reason [not to]—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Forman v. Davis*, 371 U.S. 178, 182 (1962).

4. Although not automatic, Rule 15(a) "evinces a bias in favor of granting leave to amend." *In re Southmark Corp.*, 88 F.3d 311, 314 (5th Cir. 1996). Determining whether to grant leave rests with the sound discretion of the trial court. *Id.* A court may not deny leave to amend unless it has substantial reason for doing so. *Id.* As noted in a leading treatise, a liberal policy towards allowing amendments to correct errors in the pleadings is desirable and furthers one of

the basic objectives of the federal rules—the determination of cases on their merits. 6 Wright, Miller & Kane, FEDERAL PRACTICE & PROCEDURE: CIVIL 3D § 1474 (2010).

5. Here, Plaintiff submits that leave should be granted to file its amended complaint and that no grounds exist to deny the United States's motion. The United States pled in its initial complaint that defendant Kent Carter had transferred his interest in the real properties to defendant Kent Carter Family Trust PTO and that the defendant Kent Carter Family Trust PTO was holding the three properties as a nominee or alter ego of defendant Kent Carter. In filing its amendment, the United States seeks to clarify its allegations with regard to the purported transfers to defendant Kent Carter Family Trust PTO by adding two counts to the complaint.

6. First, the United States will continue to allege that defendant Kent Carter Family Trust PTO is a nominee or alter ego of defendant Kent Carter, and will seek to add a count to its complaint to make clear its allegations with regard to nominee and alter ego. Second, the United States also seeks to add an additional count, to be pled in the alternative, of fraudulent transfer. The second count will allege that defendant Kent Carter's transfers of his home, and the other two real properties, to defendant Kent Carter Family Trust PTO were fraudulent. The basis for the addition of the fraudulent transfer claim will be that defendant Kent Carter was aware that the IRS was auditing him at the time that he transferred the three properties to defendant Kent Carter Family Trust PTO, and the purpose of the transfers was to hide assets from his creditor, the United States. This second count seeks to make clear the purported transfers to defendant Kent Carter Family Trust PTO are fraudulent and should be set aside. The United States seeks to amend its claim to plead that the taxes assessed after the purported transfers resulted in federal tax liens that also attach to the three properties because the transfers to defendant Kent Carter

Family Trust PTO were fraudulent.

7. In addition, the United States maintains that there will be no undue delay or prejudice in granting this motion. The United States will re-serve defendants Gail Carter and the New Mexico Department of Revenue and Taxation, both of whom have not yet appeared. Defendant Kent Carter has already appeared in this matter on behalf of himself as *pro se*, and on behalf of defendant Kent Carter Family Trust PTO as its Trustee.

8. As required by Local Rule 15.1, the United States' proposed first amended complaint is attached to this motion as Exhibit A.

The United States respectfully requests that the Court grant its Motion for Leave to File its First Amended Complaint, and for such other and further relief to which it may show itself justly entitled.

Dated: August 2, 2012.

KENNETH J. GONZALES
United States Attorney

/s/ Moha P. Yepuri
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ATTORNEYS FOR THE UNITED STATES

CERTIFICATE OF CONFERENCE

I certify that I have conferred with Kent Carter, individually, Kent Carter as Trustee for the Kent Family Trust PTO, and with the New Mexico Department of Revenue and Taxation regarding the relief sought in this motion. I provided to Mr. Carter a copy of the United States' Motion, Proposed Order and Proposed Amended Complaint by U.S. Mail. I also provided a copy of these documents via email to the New Mexico Department of Revenue and Taxation. Mr. Carter left the United States a voicemail indicating that he is opposed to all of the relief sought in the United States' motion. Further I certify that the New Mexico Department of Revenue and Taxation provided an email to me indicating that it is not opposed to the United States' motion.

/s/ Moha P. Yepuri
MOHA P. YEPURI

CERTIFICATE OF SERVICE

I certify that I served the foregoing United States' Motion for Leave to File First Amended Complaint on the following persons in the following manner on August 2, 2012.

Kent Carter
P.O. Box 5033
Carlsbad, NM 88220

Via U.S. Mail

Kent Carter, Trustee for
Kent Carter Family Trust PTO
P.O. Box 5033
Carlsbad, NM 88220

Via U.S. Mail

Lewis J. Terr
Special Assistant Attorney General
P.O. Box 630
Santa Fe, NM 87504-0630

Via ECF

/s/ Moha P. Yepuri
MOHA P. YEPURI